

**Before the
FEDERAL COMMUNICATIONS COMMISSION**

In the Matter of)	
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Centennial Cellular Tri-State Operating Partnership)	
Centennial Claiborne Cellular Corp.)	
Petition for Waiver of Section 54.313(d)(3) of the)	
Commission's Rules)	
)	
Michiana Metronet Inc.)	
Centennial Michigan RSA 6 Cellular Corp.)	
Centennial Michigan RSA 7 Cellular Corp.)	
Petition for Waiver of Section 54.314(d)(3) of the)	
Commission's Rules)	

**RESPONSE OF CENTENNIAL TO
OPPOSITION OF CENTURYTEL, INC.**

Centennial Cellular Tri-State Operating Partnership, Centennial Claiborne Cellular Corp., Michiana Metronet Inc., Centennial Michigan RSA 6 Cellular Corp. and Centennial Michigan RSA 7 Cellular Corp. ("Centennial"), hereby respond to the Opposition of CenturyTel, Inc. filed December 10, 2003. Centennial's Petitions for Waiver demonstrate why waivers of Section 54.313(d)(3) and 54.314(d)(3) of the Commission's rules would serve the public interest. The waiver is needed because those rules call on state commissions to submit information setting out which carriers are certified for their states, in advance of the funding for a particular period. The result is that a carrier certified as an Eligible Telecommunications Carrier ("ETC") after the relevant form is due from the state commission will necessarily not have been included in the state's submission. Centennial sought a waiver of that rule so that it could receive federal universal service funding for a period that begins with the date of its certification as an ETC.

The only opposition to Centennial's Petitions came from CenturyTel, which was also a principal party opposed, in the underlying state regulatory proceedings, to designating Centennial as an ETC in the first place. Having lost on the merits, CenturyTel apparently wants to delay the impact of that loss for as long as possible. None of CenturyTel's grounds for opposing Centennial's waiver requests have merit, however. It is plainly in the public interest for Centennial to be designated an ETC and to provide the supported services in Michigan and Mississippi. Given this, there is no logical reason to suppose that the public interest would be served by *delaying* the date when Centennial can begin receiving — and deploying — the now-authorized federal universal service funds.

Undeterred, CenturyTel raises three main claims. First, CenturyTel asserts that it would be somehow inappropriate or even unprecedented for the Commission to waive the requirement of advance state certification. Second, CenturyTel claims that Centennial has failed to meet the Commission's standard for granting waivers. Third, CenturyTel trots out its rote recitation of the notion that the Commission shouldn't do anything to advance the participation of competitive ETCs in the universal service process until after the Joint Board makes recommendations for possibly modifying the process of certifying competitive ETCs and/or the basis for providing funding to such ETCs.¹

1. Granting Centennial's requested waivers is neither inappropriate nor unprecedented. CenturyTel's claim that Centennial is seeking something unprecedented is simply wrong. See CenturyTel Opposition at 2-4. As shown in Centennial's Petitions, the Commission has routinely granted waivers of the rules (which are essentially administrative in nature) calling for

¹ CenturyTel also claims that Centennial did not seek a waiver of the proper rules. See CenturyTel Opposition at 2 n.4. This is simply untrue. Centennial's Petitions for Waiver indeed request waiver of the relevant Commission rules. Centennial requests waiver of Section 54.313(d)(3) of the Commission rules in Mississippi and Section 54.314(d)(3) in Michigan. See Centennial's Mississippi and Michigan Petitions.

advance filing of the list of ETCs, precisely in order to accommodate the situation presented here, *i.e.*, an ETC that was certified after the relevant deadline for filing had passed.²

CenturyTel also wrong claims that the Michigan PSC had somehow rejected a request to permit Centennial's ETC status to be immediately effective. *See* CenturyTel Opposition at 4. This is simply not true. The Michigan PSC made a point of granting Centennial's ETC designation request in time to include Centennial in the routine annual filing of ETCs that occurred on October 1, 2003. Centennial did not, in its request for ETC designation, ask the Michigan PSC to take any particular action with respect to a waiver of the Commission administrative rules at issue here. Instead, Centennial asked the Michigan PSC to designate Centennial as an ETC, and it did so, effective in September 2003. CenturyTel strains to draw a negative inference from this action — that somehow the Michigan PSC did **not** want Centennial to actually **receive** universal service funding as of that date, since that body failed to expressly state that supported Centennial's waiver request — even though that waiver request had not been filed during the pendency of the proceedings before the Michigan PSC. This strained negative inference is totally unwarranted.

First, as noted, what the Michigan PSC actually **did** was to determine that the public interest was served by Centennial being granted ETC status. Second, on a purely procedural level, as of today this Commission has not provided guidance about how state commissions should proceed in circumstances such as those present here, *viz.*, a state certification of a

² CenturyTel asserts that the situation here is different because the cases cited by Centennial involved self-certification by a carrier, as opposed to state commission certification. This argument is baseless as it applies to this waiver application. It presupposes that in a state certification situation, the state has to take some affirmative, substantive action either authorizing or supporting a waiver of the deadline before the carrier that is actually affected — here, Centennial — may receive one. There is, however, no basis for such a conclusion. The administrative filing requirement of Sections 53.313/314 is just that — an administrative filing requirement. That requirement does not acquire any new substantive "purpose" in a state-certification situation that it does not have in a self-certification situation. Consequently, the precedents Centennial has cited in which the Commission granted waivers of these rules are directly applicable here.

competitive ETC that takes place *after* the Section 53.313/53.314 filings for the particular period are due. Similarly, neither the Michigan nor Mississippi Rules of Practice and Procedure address such a situation. Thus, this is not a situation in which this Commission has provided guidance to state commissions about what sort of information or filing would be required from them to support Centennial's waiver requests.³

In these circumstances, there is no sound basis to fault state commissions for not providing specific information or taking specific administrative actions — or to deprive Centennial (and the citizens of Mississippi and Michigan) of the benefits of appropriate universal service funding because the states have not done so. The affected states have both spoken loud and clear in their judgments that Centennial is indeed qualified to be an ETC and that the public interest would be served by so designating Centennial. That substantive judgment plainly trumps whatever procedural, administrative niceties CenturyTel would apparently have had the states follow.

2. *Centennial's Petitions fully meet the Commission's standards for granting waivers of its rules.* CenturyTel next claims that Centennial has failed to meet the established standards for a waiver. CenturyTel Opposition at 5-6. The basic purpose of a waiver is to achieve the substantive purpose of a rule in situations where its literal application would work counter to that substantive purpose. Here, the rules in question are primarily administrative in nature, relating to the operation of the universal service system. But the key purpose of all of those rules is to ensure that carriers properly designated as ETCs receive the universal service funding to which

³ To the extent that the Commission believes that it would be helpful for there to be some standardized state regulatory input in these sorts of situations, it could consider doing so. Indeed, the Commission could outline any relevant procedures state commissions could follow in the future, in the context of addressing the public interest concerns inherent in Centennial's Petitions.

they are entitled under the system, in order to support their activities in providing supported services in the areas where they are designated as ETCs.

In this case, Centennial seeks waiver of the April 1 filing deadline for ETCs because, on April 1, Centennial had not yet been designated an ETC in either Michigan or Mississippi. Enforcement of the April deadline would preclude Centennial from receiving—and deploying—Federal Universal Service funding in Michigan and Mississippi until February, 2004, even though Centennial was actually designated an ETC in each of those states in September 2003. Waivers would permit Centennial to receive funds as of the date it was granted ETC designation, and invest them for the benefit of rural customers in Michigan and customers throughout Mississippi. Clearly, making the benefits of the Universal Service Fund (“USF”) available to citizens of Michigan and Mississippi sooner rather than later best serves the public interest. The USF Fund is dedicated to public interest goals, and it follows that the focus of the Commission’s consideration of Centennial’s Petitions for Waiver should be on what best serves the public interest.

As explained at length in the original Petitions for Waiver (“Petitions”), Section 1.3 of the Commission’s rules provides the Commission with discretion to waive application of any of its rules upon a showing of good cause. In addition, Section 1.925(b)(3) provides for waiver where it is shown that:

- (i) The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or
- (ii) In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.⁴

⁴ See 47 C.F.R. §1.925(b)(3).

Federal courts also have recognized that “a waiver is appropriate only if special circumstances warrant a deviation from the general rule and such a deviation would serve the public interest.”⁵ Accordingly, the Commission “may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest.”⁶ Clearly, a determination of what would best serve the public interest is key to the Commission’s decision of whether or not to grant a waiver in the circumstances described in Centennial’s Petitions.

The rules at issue here — the quarterly Sections 54.313 and 54.314 Certification filing schedules — were developed to assist the Universal Service Administrative Company (“USAC”) to report universal service support projections to the Commission. They were adopted to facilitate support projections for demands on the Universal Service Fund. It is inconceivable the Commission intended these administrative rules to create a process that prevented the achievement of the substantive goal of the universal service system, which is providing support to carriers designated as ETCs, or in particular to disadvantage carriers that received their state ETC designations subsequent to one of the quarterly certification deadlines. For example, in Centennial’s case, the April 1, 2003 filing deadline for third and fourth quarter 2003 support fell more than 5 months prior to Centennial’s ETC designation by the Michigan Public Service Commission (“MPSC”). Thus, it is clear that the MPSC could not have met, under any circumstances, the deadline required for Centennial to receive support beginning in the third quarter of 2003.

⁵ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *see also WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

⁶ *Northeast Cellular Telephone Co.*, 897 F.2d at 1166 (citing *WAIT Radio* 418 F.2d at 1159).

The Commission's focus with the Universal Service Fund has been on the public interest, specifically, deploying funds to improve services to Americans, particularly in rural and underserved areas of the nation. Unfortunately, the application of the April 1 Section 53.313/53.314 filing deadline would mean that Centennial would be delayed in deploying the USF funds to improve telecommunications services for customers in Michigan and Mississippi. In fact, application of the April 1 deadline would penalize Michigan and Mississippi customers as well as Centennial, when none of them had control over when Centennial was granted ETC status in either Michigan or Mississippi. This seems like an unintended consequence with a negative impact on the public interest.

3. *There is no reason to delay considering Centennial's waiver Petitions while the Joint Board process is underway.* In a last-ditch and irrelevant effort to delay Centennial's ability to receive and use universal service funding, CenturyTel claims that the Commission should delay action on the Petitions while the Joint Board formulates its recommendations regarding USF funding levels, competitive ETC designation, etc. CenturyTel Opposition at 6-7. This claim is totally without merit. Centennial has already been designated an ETC in Michigan and Mississippi. But for the essentially procedural/administrative operation of Sections 53.313 and 53.314, its entitlement to actually receiving funding would be totally beyond question. The fact that the Joint Board may make recommendations for modifying the existing system in some ways does not remotely suggest that the normal *operation* of the existing system — including processing requests for waivers of procedural/administrative rules — should somehow grind to a halt in the meantime.

In conclusion, nothing in CenturyTel's Opposition should deter this Commission from focusing on what will best serve the public interest. Citizens in Michigan and Mississippi will

benefit - and will benefit significantly sooner - if Centennial's Petitions are granted on an expedited basis.

WHEREFORE, Centennial Cellular Tri-State Operating Partnership, Centennial Claiborne Cellular Corp., Michiana Metronet Inc., Centennial Michigan RSA 6 Cellular Corp. and Centennial Michigan RSA 7 Cellular Corp. respectfully request that the Commission deny the Opposition of CenturyTel, Inc. and grant their Petitions for Waiver of Sections 54.313(d) and 54.314(d) of the Commission's Rules.

Respectfully submitted,

**CENTENNIAL CELLULAR TRI-STATE OPERATING
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CERTIFICATE OF SERVICE

I, Debra Sloan, hereby certify that on this 17th day of December 2003, I caused a copy of the foregoing *Response Of Centennial To Opposition Of CenturyTel, Inc.* to be served via electronic mail (*) or U.S. Mail to the following:

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